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LS 5-2267a

OGC HAS REVIEWED.

24 October 1955

MEMORANDUM FOR: Assistant Director for Operations

SUBJECT : Proposed Caveat for use on Copyrighted  
Material Disseminated by Foreign Documents  
Division.

Reference : Your memo, same subject, dated 18 October 1955

1. In your memorandum, you stated that a certain caveat was stamped on all documents containing copyrighted material which was disseminated by the Foreign Documents Division. You gave us the verbatim text of this caveat, made certain criticisms of it and proposed a revision in the light of these criticisms. You then ask our opinion of the text of the revised caveat.

2. We are informed that the written material to which the caveat refers consists wholly of either, written material or broadcasts which have originated in iron-curtain countries. We assume that while you don't know that these things are copyrighted, it is logical to believe that a great many, if not all, of them are.

3. The caveat which you proposed is to the effect that users and distributees of the material who used it for official purposes only were free from liability under copyright and libel statutes. We deal first with the issue of whether or not this statement is accurate as regards freedom for liability for copyright infringement.

4. The Federal Government is not subject to suit for copyright infringement brought by an American citizen for infringement of a copyright procured under a Federal law. However, this immunity does not extend to employees of the United States even though they infringe copyright in the performance of their duties and at the direction of their superiors (Towle v. Ross, 45 USPQ 143 (1940)). On this state of the law, it behooves the Government to obtain the consent for the use of copyrighted material from a copyright holder prior to using it for Federal purposes. This should be done to protect the employees who actually accomplish the infringement. The United States is subject to suit by foreign nationals for copyright infringement if the country of the national concerned and the United States have concluded an inter-national copyright agreement. So far as we can determine, the United States has not concluded such an

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agreement with either Russia or Bulgaria. Thus the United States would not be subject to suit for copyright infringement by either a Russian or Bulgarian national.

5. From the above, it follows that the restriction on the use of copyright material to that of official use only would not necessarily relieve Federal employees of liability for copyright infringement on the copyright held by any person who was not a Bulgarian or Russian national.

6. We turn now to the libel aspect of your proposed caveat. It is well established in the law that the use of libelous material by the Federal Government for an official purpose is privileged, i.e., not subject to suit. There are some ramifications to this broad general statement; but, in view of the nature of the FDD operations, we deem it unnecessary to delineate them here. From this it follows that the restriction of the use of libelous materials by the Government to that of official purpose only would obviate the bringing of a suit sounding in libel against a Federal employee. The United States as such, cannot be sued for slander or libel.

7. On the bases of the foregoing we suggest that the caveat you propose be re-written as follows:

"Dissemination of this text, or parts thereof, must be limited to "Official Use Only". Users are warned that noncompliance with this restriction can render violators personally liable."

STATINTL

  
Office of General Counsel

*owing to laws relating to defamation  
and copyright.*

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(SENDER WILL CIRCLE CLASSIFICATION TOP AND BOTTOM)

CENTRAL INTELLIGENCE AGENCY  
OFFICIAL ROUTING SLIP

TO		INITIALS	DATE
1	Deputy Chief, FDD		
2			
3			
4			
5			
FROM		INITIALS	DATE
1	[REDACTED] P & C Staff, OO	LA	1 Nov 55
2			
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STATINTL

☐ APPROVAL    ☐ INFORMATION    ☐ SIGNATURE  
☐ ACTION    ☐ DIRECT REPLY    ☐ RETURN  
☐ COMMENT    ☐ PREPARATION OF REPLY    ☐ DISPATCH  
☐ CONCURRENCE    ☐ RECOMMENDATION    ☐ FILE

Remarks: Regarding our telephone conversation of 28 October, I have not yet been able to discuss this with Mr. Pforzheimer, so I am not sure that [REDACTED] "caveat" represents the considered opinion of General Counsel's copyright expert. It seems inadequate to me. If you would telephone me, after considering it from the FDD angle, we can decide whether to pursue the point or not.

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